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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,332	12/13/2003	Thomas Haft	US20030356	1361
173 7590 06/13/2008 WHIRLPOOL PATENTS COMPANY - MD 0750 500 RENAISSANCE DRIVE - SUITE 102 ST. JOSEPH, MI 49085				
EXAMINER HECKERT, JASON MARK				
ART UNIT		PAPER NUMBER		
1792				
MAIL DATE		DELIVERY MODE		
06/13/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 5/27/08 have been fully considered but they are not persuasive. Applicant argues that Milocco and Marcussen do not teach an extendable material. However, the examiner does not understand how "extendable" differs from "flexible", which the applicant admits is known in the prior art. The applicant's specification provides no further explanation or structure describing the extendable material. Thus, the examiner believes "flexible" reads on "extendable", because said feature only allows the tubing to accommodate opening and closing. The tubing of Marcussen accommodates the door opening and closing, and flexible tubing is known to do the same.
2. Examiner maintains that a softener is a wash aid dispenser. It receives water, and outputs a product that aids in washing. Applicant provides no further structure to differentiate the wash aid dispenser from the combination of Milocco and Marcussen.
3. Finally, in regards to claim 30, the examiner maintains the citation of *In Re Japikse*. It is considered to be within the skill of one practicing the art to relocate the conduit to another area of the washing machine. Additionally, using the conduit as a basket rail is considered to be intended use. The manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1548 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988); *In re Finsterwalder* 168 USPQ 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967). Furthermore, apparatus claims cover what a device is,

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not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.* 15 USPQ 2d 1525 (Fed. Cir. 1990); *Demaco Corp. v. F. Von Langsdorf Licensing Ltd.* 7 USPQ 2d 1222, 1224-1225 (Fed. Cir. 1988). Applicant does not claim the structure of the conduit that allows it to be used as a basket rail. Thus, it is believed to be capable of operating in the same manner.

Jason Heckert

Patent Examiner, Art Unit 1792

/Michael Barr/

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